



SUPREME COURT OF THE UNITED STATES

October Term, 1968.

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,
Respondents.

SPECIAL BRIEF FILED ON BEHALF OF PETITIONERS, PAULETTE BOUDREAUX RODRIGUE, ET AL., AND ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.

MAY IT PLEASE THE COURT:

This brief is filed in response to the order of this Court issued April 2, 1969 inviting the parties and the Solicitor General to file further briefs addressing the following question:

"In light of the cases in this Court relating to the limits of admiralty jurisdiction, such as

Phoenix Construction Co. v. The Steamer Pough-keepsie, 212 U.S. 558, affirming 162 F. 494 (1908 D.C. S.D. N.Y.), and in light of the language and legislative history of the Outer Continental Shelf Lands Act, does the Death on the High Seas Act apply to these accidents?"

Traditionally, accidents which occur on piers, wharves or other structures which are firmly fixed to the bed of navigable waters have not been maritime torts.¹

It does not matter whether the pier or wharf, actually abuts a bank or levee. The fact that an open space or gap exists between a pier, dock or wharf and the bank does not make the accidents which occur upon the pier, dock or wharf maritime.²

The size of the gap or open area between the pier, dock or wharf or other structure and the bank does not make any difference.³

The two structures involved in this case are located off the coast of Louisiana. In the coastal areas of Louisiana there are numerous, literally thousands, of structures over navigable waters.

¹ See e.g. *T. Smith & Son, Inc. v. Taylor*, 276 U.S. 179, 1928 A.M.C. 447; *Wiper v. Great Lakes Engineering Works*, 340 F. 2d 727, 1965 A.M.C. 2509; *Hastings v. Mann*, 340 F. 2d 910, 1965 A.M.C. 549; *Bird v. S.S. Fortuna*, 232 F. Supp. 690, 1964 A.M.C. 2394.

² *Phoenix Construction Co. v. The Steamer Poughkeepsie*, 212 U.S. 558; *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 1926 A.M.C. 682.

³ *U. S. v. S.S. Panoil*, 266 U.S. 433, 1925 A.M.C. 181; *The Senator Rice*, 234 F. 101; *Ruddiman v. A Scow Platform*, 38 F. 158.

There are the standard wharves, docks and piers that are constructed on pilings over navigable waters in both the Mississippi River and in the bays and lakes and in Gulf waters. Normally, one edge of these docks, wharves and piers abuts an embankment while the opposite end extends over navigable waters.

Additionally, there are thousands of structures or platforms that are usually made of planks supported by pilings which serve as working areas for and in connection with oil and gas wells that are drilled in the canals, lakes and bays, and the Gulf of Mexico.

A typical oilfield would be the Terrebonne Bay Field. The way in which that field was developed is as follows:

A drilling barge would be towed to a location in the bay. A drilling rig, including derrick, is mounted on the barge. The drilling is done from the barge.⁴

When the well is completed, all that extends out of the water is a "christmas tree". The christmas tree is simply a pipe with a number of valves on it so that the flow of oil or gas can be regulated by manipulation of the valves.

When the drilling barge leaves, a small platform usually six or eight feet wide by ten or twelve feet

⁴See for example, the facts in *Guilbeau v. Falcon Seaboard Drilling Co.*, 215 F. Supp. 909.

long, is built around the christmas tree. It is nothing but planks for flooring with a hole being left in the middle to accommodate the christmas tree. The flooring is supported normally by eight or ten pilings which are driven into the bed of the bay. The flooring is usually approximately four feet above high water level. The platforms of this type that are in more projected areas of the bay are somewhat smaller and lower to the water than the platforms at the Gulf "edge" of the bay. The difference in size is due to the difference in wave and weather potentiality. The purpose of the structures is to allow those persons who from time to time work with the valves on the christmas tree to have a place to stand while working.

The above referred to small structures are commonplace in the marshy areas and navigable waters throughout South Louisiana. In the Terrebonne Bay Field alone, there are over three hundred such structures. Some of the structures abut the bank, some are close to the bank and some are in the middle of the bay and some are in the waters where the Bay and the Gulf are the same water. And, of course, the platforms do not stop at the mouth of the bay; the platforms, increasing in size as they are placed seaward, are almost as numerous in the mouth of Terrebonne Bay and seaward as they are in Terrebonne Bay. There is no demarcation line distinguishing landward from seaward platforms.

See for example, the type of platform involved in *Texas Company v. Savoie*, 240 F. 2d 674, 1957 A.M.C. 340; note also the type of platform (and its location) described in *Continental Casualty Co. v. Associated Pipe & Supply Co.*, 279 F. Supp. 490 (E.D. La. 1967).

Any ruling as to the maritime status vel non of accidents which occur on the larger platforms in the Gulf would necessarily apply to each platform located in navigable waters landward of the platform involved.

The platforms which are constructed in connection with the development of the oil and gas fields which are in the subsoil and seabed of the navigable waters in the Gulf off the coast of Louisiana are virtually the same as those in the Terrebonne Bay Field and the oilfields in the other inland and coastal waters of the lakes and bays with but the exception that they are larger in order to provide safety in the anticipated heavier weather.

If a worker on a wharf that abuts an embankment but extends over navigable water, accidentally drops a hammer on the toe of another worker, is a maritime tort involved?

If a worker standing on one of the small platforms that surrounds a christmas tree in the Terrebonne Bay Field accidentally drops a hammer upon the toe of another worker, is a maritime tort involved?

If a worker who is standing on a platform on the seaward edge of Terrebonne Bay, accidentally drops a hammer on the toe of another worker standing on that platform, is a maritime tort involved?

If a worker standing on a platform located in the Outer Continental Shelf accidentally drops a hammer

on the toe of a fellow worker, is a maritime tort involved?

The above illustrates that if this Court were to hold a tort which occurs wholly upon one of the fixed structures in the Outer Continental Shelf to be a maritime tort, the vast body of jurisprudence exemplified by *Phoenix Construction Co. v. The Steamer Poughkeepsie*, 212 U.S. 558 (including torts occurring on piers and docks) would be reversed.

It would be most illogical to hold a tort on a fixed structure, that is just over three miles from shore (i.e. one to which the Outer Continental Shelf Lands Act applies) to be a maritime tort, but a tort that occurs on a neighboring platform just under three miles from shore (i.e. one to which the Outer Continental Shelf Lands Act does not apply) not to be a maritime tort.

Of course, as to those wrongs involving a vessel which might be used in connection with the structures, the maritime remedies are unquestionably available where the extension of the Admiralty Jurisdiction Act of 1948 (46 U.S.C. Section 740) is applicable. See *Gutierrez v. Waterman S. S. Corp.*, 373 U.S. 206. But those torts which occur wholly upon a fixed structure, with no vessel being involved, have traditionally not been, and it is respectfully submitted, are still not maritime torts.

The Outer Continental Shelf Lands Act clearly-provides the appropriate and logical remedy. Persons on

those structures seaward of the three mile line are to have the same remedies as the persons on the neighboring ones on the landward side of the three mile line.

There is nothing in the Outer Continental Shelf Lands Act itself or its legislative history to indicate that maritime law is to apply to the fixed structures.

The portion of the Outer Continental Shelf Lands Act which specifies the law that is to be applied to civil (aside from taxes, which is specially dealt with elsewhere in the Act) and criminal matters arising on the fixed structures, 43 U.S.C. 1331 (a) (2), does not appear in the legislative history of the Act until most of the debate and committee meetings had already taken place. In the legislative history of the act there are few direct discussions on the point at issue here. However, the plain language of the Outer Continental Shelf Lands Act itself (see 43 U.S.C. 1331 (a) (2)) clearly specifies that state law as adopted federal law is to apply to the fixed structures and artificial islands. Additionally, what legislative history there is of the pertinent portion of the Outer Continental Shelf Lands Act further shows clearly that the legislators meant what they said in the statute in stating that state law as adopted federal law shall apply. See the exchange related in "Proceedings and Debates of the 83rd Congress, 1st Session" in Volume 99, Page 7264 of the Congressional Record where the following was stated:

"Mr. DANIEL."

"Since we have applied State laws in the fields which are not covered by Federal laws or by regulations of the Secretary of the Interior, I should like to ask the Senator from Oregon whether he understands that State laws relating to conservation will apply in this area until and unless the Secretary of the Interior writes some rule or regulation to the contrary.

Mr. CORDON.

There can be no question about that; the Senator's statement is correct. The language clearly adopts State law as Federal law where it is not inconsistent with existing Federal law or with the rules and regulations of the Secretary of the Interior; and, of necessity, the inconsistency with respect to rules and regulations of the Secretary of the Interior must be in the case of those rules and regulations which it is within the power of the Secretary of the Interior to adopt.

When he has adopted them, those rules and regulations must be inconsistent with or in conflict with the conservation laws of the States, which are then the conservation laws of the United States with respect to that particular area, or else the laws of the States, having been adopted by the United States, apply to the area. There can be no question about it." (Emphasis added.)

The Legislature of the United States, in passing the Outer Continental Shelf Lands Act, squarely faced the

question of whether "State law or Federal law" should apply. The legislators were most cognizant of the problem, as is seen from 83rd Congress, First Session, Senate Report No. 133, Page 9, in the section entitled "Legislation for Continental Shelf" where it is stated:

"What Federal laws are applicable, what should apply? In what court, where situated, does jurisdiction lie or where should it be placed? Should new Federal law be enacted where existing statutes are wholly inadequate, or should the laws of abutting States be made applicable? The necessity for answering these questions is clear when we take note of the fact that the full development of the estimated values in the shelf area will require the efforts and the physical presence of thousands of workers on fixed structures in the shelf area. Industrial accidents, **accidental death**, peace and order—these and many other problems and situations need and must have legislative attention.

Therefore, the committee feels that the dual legislative approach is most desirable. Thereby each problem may be judged and determined by the Senate on its merits and subject to the particular and different considerations involved in each. As stated previously, the committee already has done considerable work toward recommending a legislative solution of the problems of the outer shelf, and it is committed to introducing and reporting to the Senate a measure, or measures, to that end as soon as possible during this session of the 83d Congress." (Emphasis added.)

The fact that there is little debate as reflected in the Congressional Record directly on the question of what laws should apply to the artificial islands and fixed structures does not detract from (but rather lends strength to) the clear wording in Section 1331 (a) (2) stating that the State law as adopted Federal law is applicable unless inconsistent with Federal law. The fact that there is no mention in the legislative history, the committee reports, the debate or in the Act itself, that the maritime law would be applicable is significant.

The legislature met the issue as to what law is to be applicable on the fixed structure and decided that issue without reference to the maritime law.

Thus, it is respectfully submitted that the Death on the High Seas Act does not apply to deaths which occur wholly upon the fixed structures.

The Rodrigue death occurred wholly upon the fixed structure involved, Mr. Rodrigue having fallen from high in the derrick and landing upon the floor of the structure. Therefore, the Death on the High Seas Act does not apply to the Rodrigue death. Thus the Rodrigue case should be remanded as prayed for in the original brief.

Inasmuch as the Dore death, according to the pleadings, occurred in connection with unloading of a vessel, the crane used in unloading the vessel allegedly being defectively mounted such that the crane (with Mr. Dore in its cab) toppled from the platform into the waters or vessel below, the Dore case should be remand-

ed for further determinations under the ruling that while deaths occurring wholly upon fixed platforms are not compensable under the Death on the High Seas Act absent other maritime involvement, hybrid situations may occur with sufficient maritime contacts for application of the Death on the High Seas Act in addition to other remedies.

It is most respectfully submitted, however, that the issue of whether the Death on the High Seas Act applies is not squarely before this Court. By the very words of the Death on the High Seas Act itself (in U.S.C. Section 767), it is clearly seen that the Death on the High Seas Act is not an exclusive remedy. Since the Act itself and the jurisprudence as related in previous briefs, establish that the Death on the High Seas Act is not an exclusive remedy, there can be no conflict between the state law (being adopted Federal law) and the Death on the High Seas Act. The only issue before this Court is whether the state death act as adopted Federal law is applicable so as to allow recovery of the non-pecuniary losses which are not recoverable under the Death on the High Seas Act.

Since the state death act is applicable regardless of whether the Death on the High Seas Act is applicable, the issue of whether the Death on the High Seas Act is applicable need not be delved into. This is so because even if the Death on the High Seas Act were applicable, it would not prevent the Louisiana Death Act as adopted Federal law from applying.

Similarly, the holding of the 5th Circuit in *Pure Oil v. Snipes*, 293 F. 2d 60 is not at issue in the instant cases. In *Snipes*, the defendant had urged that the State law (which encompassed a one-year statute of limitations) was the exclusive remedy of a man who was injured on a platform in falling from it into the sea, but the Court rejected the defendant's contention and held that the Federal law (the doctrine of laches) was available to plaintiff. The 5th Circuit's holding did not involve the question of whether both remedies would be available if the plaintiff's suit had been timely brought.

It is respectfully submitted that the relief prayed for in the original brief on behalf of petitioners be granted.

Respectfully submitted,

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CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Brief on Behalf of Petitioners, Paulette Boudreaux Rodrigue, et al., and Ella Mae Du-bois Dore, Individually, etc. to Mr. Richard C. Baldwin, Adams and Reese, 847 National Bank of Commerce Building, New Orleans, Louisiana; Mr. Thomas W. Thorne, Jr., Lemle, Kelleher, Kohlmeyer, Matthews & Schumacher, National Bank of Commerce Building, New Orleans, Louisiana; Mr. Lancelot P. Olinde, Humble Oil & Refining Company, P. O. Box 60626, New Orleans, Louisiana; Mr. H. Lee Leonard, Voorhies, Labbe, Fontenot, Leonard & McGlasson, Lafayette, Louisiana; Mr. James E. Diaz, Davidson, Meaux, One-bane & Donohoe, 201 West Main Street, Lafayette, Louisiana, and the Solicitor General, Washington, D. C.

....., 1969.